

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 11 2004

PATRICK FISHER
Clerk

MIROSLAVIA SALAZAR; ANIA
SALAZAR,

Petitioners,

v.

JOHN ASHCROFT,

Respondent.

No. 02-9579
(No. A75-380-640 &
A75-380-641)
(Petition for Review)

ORDER AND JUDGMENT *

Before **TYMKOVICH** , **HOLLOWAY** , and **ANDERSON** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioners, Mexican nationals who have been ordered removed to Mexico, seek judicial review following the administrative denial of their request for

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

cancellation of removal under 8 U.S.C. § 1229b. Petitioners do not challenge the underlying removal order, but raise two categorically distinct sets of objections regarding (1) the substantive correctness of the § 1229b decision in their case and (2) the constitutionality of the streamlined administrative review procedure set out in 8 C.F.R. § 1003.1(a)(7). This court has recently issued decisions foreclosing each of these avenues of argument.

Petitioners' request for cancellation of removal was denied for various reasons, including lack of evidence "establish[ing] that removal would result in exceptional and extremely unusual hardship." 8 U.S.C. § 1229b(b)(1)(D). Whether to so characterize the hardship caused by a particular petitioner's removal is largely a judgment call. "In other words, the decision requires the exercise of discretion." *Morales Ventura v. Ashcroft*, 348 F.3d 1259, 1262 (10th Cir. 2003). Thus, petitioners' requests were denied on a discretionary ground excluded from judicial review by 8 U.S.C. § 1252(a)(2)(B)(i), and we lack jurisdiction to consider the merits of that decision. *Morales Ventura*, 348 F.3d at 1262. Further, because hardship is a necessary condition for cancellation of removal, any challenges to other, alternative grounds cited for the denial of such relief are moot. *Id.* at 1262-63.

To the extent petitioners' constitutional objection to the administrative process itself is independently cognizable, it is foreclosed by this court's decision

in *Yuk v. Ashcroft* , No. 02-9546, 2004 WL 79095 (10th Cir. Jan. 20, 2004). In *Yuk*, we joined every other circuit that has reached the issue to hold that the streamlined administrative review process established in 8 C.F.R. § 1003.1(a) “do[es] not violate principles of administrative law or due process.” *Id.* at *9.

The petition for review is DISMISSED.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge